

1 admissible to the United States pursuant to Title 8, United States Code, Section 1182(a)(7)(A)(I)
2 (Section 1182(a)(7)(A)(I)) because she was not in possession of a valid document for admission
3 (Complaint ¶ 11); that Kuang is not admissible to the United States pursuant to Title 8, United
4 States Code, Section 1427(a)(3) (Section 1427(a)(3)) because she was not a person of good
5 moral character during the applicable statutory period (Complaint ¶ 18); and that Kuang is not
6 admissible to the United States pursuant to Title 8, United States Code, Section 1182(a)(6)(C)(I)
7 (Section 1182(a)(6)(C)(I)) because she procured her visa by fraud or willful misrepresentation of
8 material facts (Complaint ¶ 27).

9 In its amended motion for summary judgment, the United States maintained that there
10 were no genuine issues of material fact, and that, viewing the in a light most favorable to the
11 defendant, the United States was entitled to summary judgment as a matter of law. Further, the
12 United States argued that it was entitled to summary judgment based upon the doctrine of
13 collateral estoppel: that the defendant's criminal conviction under Title 18, United States Code,
14 Section 1542, precluded her from re-litigating the validity of her citizenship.

15 Summary judgment is appropriate when the "pleadings, depositions, answers to
16 interrogatories and admissions on file, together with the affidavits, if any, show that there is no
17 genuine issue of material fact and that the moving party is entitled to judgment as a matter of
18 law." Fed. R. Civ. P. 56(c). It is the burden of the moving party to show the absence of a
19 genuine issue of material fact with the court viewing all facts and drawing all inferences in the
20 light most favorable to the nonmoving party. See Zoslaw v. MCA Distrib. Corp., 693 F.2d 870,
21 883 (9th Cir. 1982). Once the moving party has satisfied the requirements of Rule 56, the
22 burden shifts to the non-moving party to "set forth specific facts showing that there is a genuine
23 issue for trial." Anderson v. Liberty Lobby, Ind., 477 U.S. 242, 256 (1986); accord Celotex
24 Corp. v. Catrett, 477 U.S. 317, 325 (1986). The non-moving party "may not rely on denials in
25 the pleadings but must procure specific evidence, through affidavits or admissible discovery
26 material, to show that the dispute exists." Bhan v. NME Hosp., Ind., 929 F.2d 1404, 1409 (9th

1 Cir. 1991). The non-moving party “must do more than simply show that there is some
2 metaphysical doubt as to the material facts.” Matsushida Elec. Indus. Co. v. Zenith Radio Corp.,
3 475 U.S. 574, 586 (1986). When ruling on a motion for summary judgment, a trial court can
4 consider only admissible evidence. See Fed. R. Civ. P. 56(e); Orr v. Bank of America, 285 F.3d
5 764, 773 (9th Cir. 2002).

6 In order to revoke Kuang’s citizenship and cancel her Certificate of Naturalization
7 pursuant to Section 1451(a), naturalization must be either “illegally procured,” or “procured by
8 concealment of a material fact or by willful misrepresentation.” Pursuant to Section
9 1182(a)(6)(C)(i), if an alien procures a visa by fraudulent means or willfully misrepresents a
10 material fact, then the alien is inadmissible to the United States. Similarly, Section
11 1182(a)(7)(A)(i)(I) states that if an alien’s immigrant visa is invalid at the time of the alien’s
12 application for admission into the United States then the alien is inadmissible to the United
13 States. Additionally, in order to lawfully obtain United States citizenship, a person must be of
14 “good moral character” for the five years immediately preceding the date of filing a citizenship
15 application pursuant to Section 1427(e). Section 1101(f)(6) states that a person who gives false
16 testimony for obtaining naturalization benefits is considered not of good moral character.

17 The United States Supreme Court has stated that “[collateral estoppel] generally refers to
18 the effect of a prior judgment in foreclosing successive litigation of an issue of fact or law
19 actually litigated and resolved in a valid court determination essential to the prior judgment,
20 whether or not the issue arises on the same or a different claim.” New Hampshire v. Maine, 532
21 U.S. 742 (2001). In other words, collateral estoppel “prevents relitigation of issues actually
22 litigated and necessarily decided, after a full and fair opportunity for litigation, in a prior
23 proceeding.” Shaw v. Hahn, 56 F.3d 1128, 1131 (9th Cir. 1995). “The party asserting collateral
24 estoppel must show that the estoppel issue is identical to an issue litigated in a previous action.”
25 Kamilche Co. v. United States, 53 F.3d 1059, 1062 (9th Cir. 1995). Additionally, “the issue to
26 be foreclosed in the second litigation must have been litigated and decided in the first case.” Id.,

1 citing Starker v. United States, 602 F.2d 1341, 1344 (9th Cir. 1979). Lastly, the doctrine of issue
2 preclusion prevents relitigation of all issues of fact or law that were actually litigated and
3 necessarily decided in a prior proceeding, not just the particular arguments that were raised in
4 support of the first decision. Id., citing Yamaha Corp. of America v. United States, 295 U.S.
5 App. D.C. 158, 961 F.2d 245, 254 (D.C. Cir. 1992), cert. denied, 506 U.S. 1078 (1993).

6 In the instant matter, through properly authenticated and admissible evidence, the United
7 States has established that no triable issue of fact exists regarding whether Kuang “procured [her
8 naturalization] by concealment of a material fact or by willful misrepresentation.” See Title 8,
9 United States Code, Section 1451(a). Specifically, on both her visa and naturalization
10 applications, Kuang lied about the fact that she was living with Wai Kwong Ho. Therefore,
11 Kuang’s visa allowing her to enter the United States and her naturalization as a United States
12 citizen are invalid, and the United States is entitled to summary judgment as a matter of law.

13 Furthermore, the criminal conviction in United States v. Chaofan Xu, et al., Case No.
14 2:02-cr-00674-PMP-LRL, should be given preclusive effect. Since the issues litigated during the
15 criminal trial include identical issues to those raised in this proceeding, the doctrine of collateral
16 estoppel prevents Kuang from re-litigating those same issues herein. Thus, the United States is
17 entitled to summary judgment on this basis as well.

18 Accordingly, for the foregoing reasons, and with good cause showing:

19 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States’
20 amended motion for summary judgment (Doc. No. 44) is hereby GRANTED, and Defendant’s
21 Certificate of Naturalization (No. 25912023) is REVOKED.

22 DATED this 24th day of February, 2010.

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24 
25 UNITED STATES DISTRICT JUDGE
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